

LABOR MANAGEMENT RELATIONS QUARTERLY MEETING

400 FIRST STREET BUILDING

WASHINGTON, DC

MARCH 31- APRIL 2, 1998

PARTICIPANTS:

MANAGEMENT:

Ron Thompson
Joe Chapin
Phillis Morgan
Regina Sullivan
Dan Joslin
Jim Foley
Ruby Navarro-Villarreal
Kris Balamenti
Kirk Underwood
Nikki Gallo

UNION:

Phil Glover
Jim Turner
Rick Miller
Dennis Biesik
Manny Borquez
Larry Raney
Joe Mullen
Earl Elliott
Fernando Blanco
Buck Thomas

Subject Matter Experts:

Larry Munger
Dave Good
Bob Newport
Ed Oppler

POLICIES NEGOTIATED

SEE SEPARATELY ATTACHED POLICY NEGOTIATION NOTES ON:

P.S. 3000.02:	Performance Management Program
P.S. 3000.02:	Reference Checking
P.S. 5540.05:	Prisoner Transportation Manual
P.S. 5500.09:	Correctional Services Manual

Summary of Issues Addressed during LMR Meeting:

Armed posts
Brooklyn staff under investigation
Bylaws for medical staff
Chit boards
Correctional Services Roster
Equipment (radios)
Evaluations done on line staff
Flag flown at half-staff
FMCS procedures
Local issues
Lock downs
Notification of employees during/after investigations
Outside employment
Overtime
Pagers
Penalogical credit
Per capita - Bureau-wide
Per capita medical costs
Promotional boards
Survey to Physician Assistants
Suspense date for policy issues and negotiations
TB testing
Two late nights
Vacating posts
Workgroups

1. **P.S. 3000.02: PERFORMANCE MANAGEMENT PROGRAM**

MINUTES: Union's main concern is that the new system is not going to cover everything about the employee, i.e., it will over or under compensate b/c there are no more logs.

* Also, there's the idea that a supervisor is going to hold onto good or derogatory information for an entire quarter. It used to be clear where that information went, i.e., a performance log.

* If the program is implemented, the Union wants to be able to "reopen" issues after a certain trial period. They don't want to fight this with management when the time comes up.

* "Time frame" is another issue, i.e., 15 days to write down something negative and bring it to the attention of the employee. Thus, according to the Union, without such a provision, supervisors are no longer accountable for meeting their time frames.

* Language regarding logs in Article 14 is locked in for the length of the contract per Union and that is their position.

* Management ardently disagrees with the interpretation of Article 14. Master Agreement negotiations notes (management read notes to Union) and discussions during negotiations demonstrated that the Union indicated that they would want to negotiate the performance evaluation policy when it was changed. Management is uncertain why Union now takes new position. Union is not willing to negotiate anything in Article 14, including the logs.

* Union is willing to negotiate everything in the policy with the exception of logs b/c the Master dictates that logs be kept (per Union).

* The Union perceives management as declaring non-negotiability whereas management sees the Union as not willing to negotiate.

FINAL RESOLUTION: TABLED until further options are explored; this was a mutual agreement; no time frames have been set up right now.

2. **P.S. 3000.02: REFERENCE CHECKING**

MINUTES:

- Prop 1: Union wants to have access to what their supervisors are saying about them. They also believed the form is double work (b/c evaluations already have information) but management said that reference checking gives some information that's necessary, e.g., how person deals with conflict.
- Prop 2: Union says they want to make sure that supervisors understand that use of leave for family illness purposes is also off limits.
- Prop 3: Union's proposal speaks for itself. Management responded that the form itself makes clear that only job-related questions should be posed and documented.
- Prop 4: Union is adamant that an inmate is never a "customer." Management agreed to some language.
- Prop 5: Management said they add "if known" to current language which asks if the employee has received a disciplinary action within the last two years.
- Prop 6: The EEO Class Action Settlement says that the paperwork will be kept in the Merit Promotion package (per management). Management asked the Union to withdraw; Union didn't want to do this.
- Prop 7: Management asked the Union to withdraw; they didn't want to do this.

FINAL RESOLUTION: Management and the Union agreed to go to FMCS to get a mediator to assist in reaching agreement.

3. **P.S. 5540.05: PRISONER TRANSPORTATION MANUAL**

MINUTES:

Prop 1: Per management, there's not much of a change b/c the agency has always paid for the exams. Article 21 addresses this issue (training, expenses). Management counter-proposed Union's language with: "These examinations will be provided by the Bureau of Prisons at no cost to the employee. Such exams, if done by private physicians, must be approved in advanced by the Bureau of Prisons". Union agreed to language.

Prop.2: There's no change from old policy but, per Union, there's a change in the Master, i.e., length of time. Length of time isn't negotiable per management. The LMR Meeting held in November addressed this issue. Management will provide case cites.

Management stated that what was agreed to in negotiations is not what's happening in the field. It's management's right to determine the qualifications (Union agreed with this). However, Union wants to know if working a six-month post (anytime in the past) is considered a "qualification"? Management needs to put out what the actual qualifications are. (Per Union). The Union wants management to tell staff what they're doing wrong if they're not put in a post. This is an interpretation issue - Union sees it as changing procedures whereas management sees it as the agency's ability to continue a practice it has had and the Master Agreement not changing that.

FINAL RESOLUTION: There are no complaints right now from anyone specific. Union will take this to litigation.

Prop 3: Union gave the example of a North Carolina institution never getting paid for overtime (Other sites: Elkton, ISMs). This is an issue that needs to be negotiated at local level. New language proposed: "Institutions will alter work schedules of staff to accommodate scheduled bus, van and airlift movement rather than using overtime. Institutions will fulfill any required bargaining over procedures and appropriate arrangements prior to making such changes. If the payment of overtime becomes

unavoidable, procedures for assigning such overtime will be negotiated in accordance with the Master Agreement.” Both Union and management agreed to language.

Prop 4: There was no change from the old policy, per management, and therefore there was no duty to negotiate. But management was willing to take out the sentence. Union proposed language. TABLED per management and Union.

Prop 5: There was no change from the old policy per management; Union will fight this b/c they don't believe in the “no change” explanation. The Union will take this to litigation.

Prop 6: With same rationale as #4, management suggested taking out 2nd and 3rd sentences. Union agreed to this.

Prop 7: There was no change from old policy per management; this is addressed in Article 28 (Section I,2) of Master Agreement and the Union's addition is in conflict w/that portion of the Master Agreement. Union withdrew.

Prop 8: Union withdrew this proposal.

Prop 9: The proposed language was added into #3.

Management agreed to Union's request to prepare a “no duty to bargain” memorandum.

4. **P.S. 5500.09: CORRECTIONAL SERVICES MANUAL**

TABLED PER UNION AND MANAGEMENT UNTIL ANOTHER TIME.

Agenda Items: UNION

1. **ISSUE:** “Suspense dates for policy issues and negotiations. It is the Council’s view that after negotiations occur on policy, the LMR section should inform the Regions and Wardens, with a copy to the Presidents, of the outcome. For example, if it is agreed to ‘pull’ a policy this should be communicated by EMS within 14 days to the BOP Leadership at all levels until the normal policy issuance system corrects the policy.”

Response: Management stated that the new Master Agreement should take care of this problem, as we won’t be able to issue policy without having it negotiated to begin with. Management understood the Union’s concerns. Management agreed to put something out w/in 14 days of a policy being pulled or changed as a result of negotiations.

2. **ISSUE:** “We continue to have concerns that the Correctional Services Roster is being circumvented at many institutions. It appears that by using the phrase ‘management’s right to assign’, Lieutenants and Captains feel they can disregard the negotiated roster procedures. I know that at an earlier LMR meeting we thought this was taken care of and would be handled on a case-by-case basis, however, since a certain Captain’s Conference the incidents are rising.”

Response: Management stated that the Master Agreement says that preference requests will be considered in order of seniority, and that reasonable efforts will be made to grant the requests. Case Law (Specifically 49 FLRA 319, dated 3/4/94) indicates that management’s rights to assign work and determine the personnel by which agency operations will be conducted under 7106(a)(2)(B) of the statute encompass the right to determine the particular qualifications and skills needed to perform the work and the right to judge whether particular employees have the requisite qualifications to do the work.

The Union said they can pinpoint a number of places that this is starting to occur. They want it known that this is part of the

Master Agreement and has to be adhered to in the form of a memo or other means. It needs to be reemphasized to Wardens, Captains and Lieutenants. Management agreed to notify the above people.

3. **ISSUE:** “Since management at local institutions are pursuing the addition of two late nights for Unit Management staff and seems bent on implementing whether the Local Union agrees or not. The Union is proposing to negotiate, pursuant to the Federal Employees Work Schedules Act, Compressed and Flexible schedules for all Unit Management bargaining unit employees nationwide. Those employees that want to opt out of such a work schedule, as you know, can do so according to the act. This is a notice that we want to negotiate such a schedule and as you know, 5USC., 7106 is not controlling under this act. We request a discussion on when we could get this negotiated.”

Response: Union gave example at Butner. This has created a great deal of hardship on single parents in the field. Management asked for more concrete examples per previous meeting issue. Union agreed to give management a list but said they’ve been working with Wardens and Regional Directors first to resolve issues and that’s been the delay. Union suggested having someone working 5 nights a week, just like in custody.

The Union explained that the draft is being treated as final policy, e.g., in Coleman and Butner. Union wants options of compressed schedule and flex-schedule. Management stated that the law doesn’t allow for combination of the two in one person’s schedules. Union said that the proposal, though not worked out yet, would be for someone to choose one or the other. This would be a mechanism to give staff some flexibility under Work Schedules Act (chosen by staff and not management).

Again, Union agreed to give management a list of where this is happening. Union wants management to tell Mr. Chreno (and others based on list that Union will provide to Joe) that unit managers don’t have to go forward with this now as the policy is not out yet. Union will compile list and management will act upon that list.

4. **ISSUE:** “At this year’s annual training, it is being put out that all the staff at Brooklyn were guilty. The Bureau knows that several of the individuals’ cases have not been to trial or handled administratively yet. We would like this general comment stopped until all the decisions are in. As you know, at least one person has been acquitted.”

Response: Per Union, in Code of Conduct Training at ART, headlines from paper were shown and shared with staff with implication that all people were automatically guilty. The Union’s concerned with using staff names to make a point even if it is in the newspaper and part of public information. These cases have not all been completed and thus, staff shouldn’t be looked upon as guilty before a decision is reached b/c they may end up working at an institution afterwards. Staff names should not be used for ART examples, especially if decisions haven’t been reached. Management agreed that this should not be occurring.

5. **ISSUE:** “It is still being taught during annual training that employees may only work 25 hours per week at outside employment. In August of 1996, this section of the Code of Conduct was changed by negotiation.”

Response: Per management, the new policy requirements were forwarded to MSTC two years ago and this is what should be taught. If staff at the institution are not getting this information, it is a local issue to be resolved. The Union was satisfied with response. Union will deal with this on a case-by-case basis.

6. **ISSUE:** “Workgroup participation is increasing but I am requesting as much time as possible to find qualified union representatives that can speak intelligently to the issues at hand. The last workgroup that we were asked to provide a representative on, I was asked on a Tuesday while on the road for a workgroup meeting the next Monday. I request more notice on these things. I would also like it to become a standard practice to provide the workgroup member with any issues or minutes that have been discussed prior to the workgroup being formed. This would facilitate a more productive, informed representative.”

Response: Union realizes that this isn't an LMR issue but they wanted to bring this up. They were satisfied with management's response that recent training made more people aware that they need a Union representative on workgroups. The Union wants notice to go out to Exec Staff that the President of CPL needs more time to find qualified and knowledgeable representatives. In addition, the Union would like more background information before they sit on the workgroup. They feel this would be more helpful to the designated representative. Management stated that usually discussions held before workgroups are formed are simply that, informal discussions, and thus, do not have any formal meeting notes or minutes. In addition, management hopes that new Master will take care of this. The Union was satisfied with the response.

7. **ISSUE:** "Evaluation of Line Staff after visiting locals in the North Central - I have heard several complaints about employees being evaluated by a supervisor not on their shift..."

Response: Union took issue to Mr. Hershberger. Regional Director has resolved issue prior to meeting.

8. **ISSUE:** "Sensitivity Training: Staff in the North Central feel that the Supervisors need to attend a class on sensitivity training and just how to supervise employees. Supervisors deal with staff differently than the way they talk to inmates. Example: employee calls in for sick leave [to assist spouse] and supervisor makes statements that it is time to change her in for a new one. The officer's wife later dies, and the employee is carried AWOL. ADX Florence. Female is called into a formal meeting, and breaks down and cries; the union representative requests that she put on sick leave. She goes to her doctor and her doctor gives her a sick leave slip. She takes the slip to the supervisor and he puts her on AWOL."

Response: Union resolved this issue prior to meeting.

9. **ISSUE:** "Investigations conducted by OIA, SIS, and SIA" - There's a concern about employees being notified when an investigation is

either completed or still pending.

Response: Union has resolved this and it's in the new Master (Article 30, Sec. D2).

10. **ISSUE:** "Vacating Posts: Assigning non-custody staff to work custody while custody staff are used to shakedown areas in non-emergencies."

Response: The issue of vacating posts has been brought up by the Union at many of our previous meetings. Management and the Union understand each other's positions. Union indicated that the issue is no longer that staff are vacating posts and this is a safety issue. Management addressed this with Exec Staff so it was corrected. The issue now is that non-custody are working custody positions and not filling behind those people. Therefore, there won't be enough people around if a real emergency happens or, these individuals are not being given credit for working correctional posts, and are still expected to complete their regular assignments. Management asked for Union's quarterly LMR reports b/c Regional Directors really pay attention to these. Union asked that management keep this whole issue in mind.

11. **ISSUE:** "Hostage Negotiation Team: Why would a Warden publish the names of the team members in the newsletter at USP Florence?"

Response: The union has resolved the issue through the Regional Director.

12. **ISSUE:** "Right now only the Director can order the flag to half-mast in honor of somebody. Union is requesting permission for the wardens to fly the flag at half mast at the institutions where a local law enforcement officer has been killed in the line of duty."

Response: Union stated that they will handle the issue with the appropriate Regional Director; management did give some background information with which the Union was satisfied.

13. **ISSUE:** "Institution Chit Board has not been negotiated by CPL #33. Some institutions are negotiating, some are not. No information

on this was run by any CPL #33 E-board. They (management) said it's for safety of staff, but it's no more then clocking staff."

Response: Management indicated that I&I bargaining took place last week (3/26/98) at Boron and SeaTac is currently looking into solving their similar problem. Union did not hear this and disagreed that negotiations took place. Management clearly explained that management at the institution handled it. IF they haven't done it, management will advise Boron to have I&I bargaining. IF they have , then issue is settled. Per management, the chit board and hand X-ray device are not meant as clocking devices. However, if a security issue arises, the chit board or the hand device results can be used to see if an employee has been in the institution on that day.

14. **ISSUE:** "Institution not letting Local Union Officials take Union pagers inside of Institution (these are needed for Union Representation). It shouldn't be necessary for Union Officials to write memos to their Warden to allow them to carry the Union pagers inside the institution."

Response: Union indicated that this is happening at Dublin and Lompoc. There are a lot of staff using these b/c the switchboards can't get through to them, and families or others are trying to get a hold of them. Management has indicated that there are situations where communication devices might cause security problems. This issue has no immediate problem to resolve and will be focused on when the Correctional Services Manual is negotiated.

15. **ISSUE:** "Equipment - Radios in MCC San Diego, CA and FCI Phoenix, AZ" Shortage of radios and batteries at these institutions.

Response: Union indicated that Phoenix said they had money budgeted but nothing is happening. San Diego is the other institution having problems. When is Western Region going to release their money, asked Union. Management said Phoenix is about to get their money. As of 3/25/98, the purchase request for these items was in the Central Office, awaiting signatures (per management). Management at San Diego is aware of the problem and they are also pursuing funding, i.e., they are asking for \$460,000 for FY-

99. If the Regional Director can get back to the Warden, and the Warden can get back to the local President, this would help (per Union).

16. **ISSUE:** CPL #33 wants notification of any prison lock downs.

Response: It should be noted that the Council withdrew language during the Master Agreement negotiations that addressed this issue (Article 3). Per management, they are under no contractual obligation to notify the union of any emergency. However, as a courtesy, management should let Union know about any emergency. Management will ask the Regional Directors to notify the Union's Regional Vice Presidents.

17. **ISSUE:** "The continued resistance of the custodial roster procedures, whether or not it is purposely violated by management officials, the problem needs to be address at this level, so compliance can be met."

Response: Union withdrew this item.

18. **ISSUE:** "The bylaws for medical staff of the BOP, which are being signed off on by the Regional Director, the Warden and A.W. of the effected facility and the Chief Medical Director for the BOP. Why do we think this is necessary."

Response: Per management, the only places that have bylaws are the medical referral centers (Carswell, Butner, Springfield, Lexington, Rochester, Ft. Worth, Ft. Devens) through an accreditation requirement. The Health Services Division (HSD) representative said that they'd be glad to run these bylaws through the Union; all they need to know is who the Union contact will be. Union will get together with LMR with proposals concerning what needs to be fixed. HSD and LMR agreed with this. Decisions will then be made about signature blocks, policy changes, etc.

19. **ISSUE:** "Several institutions have asked if it would be possible to have a representative from the Union to sit on promotional boards at the regional level when the promotions for a bargaining unit

position.”

Response: This was a discussion item only.

20. **ISSUE:** “The agency recently disseminated a survey to the field entitled “Task and KSAO Statement Ratings” for Physician Assistants. It is interesting to note that the national health service administrator was unaware of any such survey, and his letter of January 12, 1998 about restructuring the agencies’ health services reveals the intent to hire fewer and fewer PAs. Again, I must ask, what was the purpose of such a survey? The November’s LMR issue by labor was looking at tasks that were NOT clinically and custodial related. Those tasks were specifically eliminated from the survey. Labor would like to see the progress the agency is having on converting MLP positions at facilities who have chronic shortages of staff.”

Response: Management explained what the purpose of the survey was, i.e., to create a crediting plan (handed out memos addressing this). Union was concerned about SSNs; management explained that this was used to document that Subject Matter Expert (SME) were used for survey responses and for legal purposes. Union’s concern is that 70-80% of PA’s duties are not in their PDs. Management indicated that the survey’s results and the creation of the crediting plan would hopefully alleviate that problem. The Union asked to receive the results from the survey (per Master Agreement). Survey was discussed in some detail (e.g., response rates). In addition, HSD gave Union some background information on MLP positions.

21. **ISSUE:** “Mr. Good’s letter of January 12, 1998 expressed serious concerns about per capita medical costs within the agency as compared to the contract medical facility at Beaumont. The Council would like to have a copy of the contract specs for Beaumont to review (medical).”

Response: Management gave the Union a copy of contract, i.e., the Statement of Work. This was done w/out a formal request and

out of good faith.

22. **ISSUE:** “There is a concern with the inmates in custody in County Jails who are not tested for TB or Hepatitis; the Bureau buses then pick them up and transport them to our facilities and are met at the door with staff in respirators, who hustle them into waiting vans and transport them to local hospitals. Not doing this testing is not protecting our staff who unknowingly transport these infected inmates.”

Response: Management asserted that TB is the one disease everyone’s concerned with. The Marshal Service is finally, slowly coming on board with BOP policy and procedures. The BOP doesn’t put people on airlifts unless they’ve been tested for TB. The Marshal Service now has its own card (or statement) that they give to their contractors and prove that TB testing is done. They are cooperating b/c they realize the harm to themselves but it won’t be 100% on their part b/c of the large number of people and facilities within their agency. HSD gave a very detailed explanation of the Bureau’s testing components and equipment. The Union was satisfied with this response.

23. **ISSUE:** General concerns regarding the way overtime is compensated, e.g., institutions are selective.

Response: This was a discussion item only. Management informed Union that they’ve done everything possible to ensure that management complies with the regulations. The Union agreed to let management know on a case-by-case basis when and where this is occurring.

24. **ISSUE:** “Several institutions within the region (NE) have asked why CMS staff and others are required to use a credit card and make purchases when institutions have a business office that is supposed to perform these functions.”

Response: The Union withdrew this item.

25. **ISSUE:** “Loss of Penalogical Credit by OPM for the Automotive Worker Foreman at USPTH Garage and National Bus Center. They were

placed at WS-9 and then after Penalogical Credit was removed, were left at a GS-8 grade, which could possibly be appealed in Federal court.

- A) What are the ramifications on their Hazardous Duty Retirement down the road if the Penalogical Credit is not restored? Would this not be like the people working in the Central Office?
- B) With the removal of the Penalogical Credit, what happens when they have to work inside the USP; are they then given pay at the WS-9 level while working inside the fence?
- C) Couldn't the prerequisite that OPM asked to be applied back in the early 80's still be done to resolve this issue? Please provide this response in writing so that I may give it to the 8 employees it impacted."

Response: Management gave the Union a document that answers all of these questions, in writing. The Union was satisfied with this response.

26. **ISSUE:** "Some locals are being told that, due to the new Correctional Services Manual, armed posts are to be limited to 3-9 months, and if this is not complied with, the institution will be written up during Program Reviews. This is in violation of the current policy on Correctional roster rotations and even states in the CS Manual that it will not violate the Master Agreement."

Response: This was a discussion item; no resolution was reached.

LOCAL ISSUES:

GENERAL RESPONSE TO ALL OF THE BELOW: The Union indicated that they would handle these issues with the respective Regional Directors.

- 1.) FCI MCKEAN: Concerns about local LMR practices and failure to negotiate a change regarding telephone capabilities at the rear gate.
- 2.) LSCI ALLENWOOD: Concerns regarding management's compliance with Union's statutory rights and its alleged reluctance to sign formal agreements.

- 3.) FCI FAIRTON: A pay questions for certain activities of the S.O.R.T. and D.C.T.

NOTE: Management assured the Regional VP (Dennis Biesik) that they would get a response to him from the Regional Office.

- 4.) FCI LORETTO: Complaint about the level of LMR between Union and management locally.
- 5.) MCC NEW YORK: Complaint that management brings charges that are stale.
- 6.) FCI FORREST CITY: Complaint concerning reassignment of employee from food service to corrections.

Agenda Items: MANAGEMENT

1. Presentation on per capita issues by the Administration Division.

Bob Newport presented the data, requested by the Union, concerning 1988 staffing patterns and gave a detailed discussion on the per capita issue in the Bureau.

2. New FMCS procedures, e.g., who pays for second arbitrator panel list, will be discussed.

Response: Management and the Union agreed that each party will pay half of the incurred costs of arbitrator panel lists, whether the list is the first, second, etc.